

Application No. : 10/789,815
Amdt. Dated : July 19, 2006
Reply To O.A. Of : April 19, 2006

Amendments To The Drawings

The attached sheets of drawings replace the original sheets including Figs. 1-5.

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REMARKS

The Applicants thank the Examiner for his careful and thoughtful examination of the present application. By way of summary, Claims 1, 4-25, and 27-38 were pending in this application. In the present amendment, the Applicants have supplied formal drawings and have not amended the claims. Accordingly, Claims 1, 4-25, and 27-38 remain pending for consideration.

Amendments To The Drawings

The Applicant is submitting herewith Substitute Formal Drawings of Figures 1-5, which do not have hand-markings. Please note that the amended drawing sheets include all of the figures appearing on the immediate prior version of the sheet. The Applicant respectfully submits that no new matter is introduced by the proposed drawing changes.

Rejection Of Claims 1, 4-9, 14-16, 18-21, 24, 25, 27-31, and 33-36 Under 35 U.S.C. § 102

The Office Action rejected Claims 1, 4-9, 14-16, 18-21, 24, 25, 27-31, and 33-36 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,388,707, issued to Suda (the '707 patent). The Applicants respectfully traverse this rejection because the '707 patent fails to identically teach every element of the claim. See M.P.E.P. § 2131 (stating that in order to anticipate a claim, a prior art reference must identically teach every element of the claim).

Claims 1, 14, 25, and 31

The '707 patent does not teach or suggest "an eyepiece comprising a flexible eye cup including a pliable member capable of substantially form fitting an eye socket of a user thereby being capable of substantially precluding illumination of a face of the user by the night vision device," as recited by Claim 1, or "a flexible eyepiece," as recited by Claims 14, 25, and 31. In contrast, the '707 patent discloses a finder F within which an image displayed on the finder frame 24 is observed. See the '707 patent at col. 6, ll. 57-62 and Figs. 1A & 19. The '707 patent does not teach or suggest at least,

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that the finder F comprises a flexible eye cup including a pliable member capable of substantially form fitting an eye socket of a user, or that the finder F is capable of substantially precluding illumination of a face of the user by the night vision device. By contrast, Claim 1 recites "an eyepiece comprising a flexible eye cup including a pliable member capable of substantially form fitting an eye socket of a user thereby being capable of substantially precluding illumination of a face of the user by the night vision device" and Claims 14, 25, and 31 recite "a flexible eyepiece." A flexible eyepiece can reduce the amount of light that can illuminate the user's face proximate to the covered eye, can allow the user to observe the subject without light from the digital display being noticed by others, and can allow the uncovered eye to maintain its visual acuity to the surrounding light conditions. See, e.g., ¶¶ [0039]-[0040] of the present application. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 1, 14, 25, and 31.

Claims 4-9

As described above, Applicants submit that Claim 1 is not anticipated by the '707 patent. Claims 4-9 each depend from Claim 1. Thus, Claims 4-9 include all the features of Claim 1 and recite unique combinations of additional features not taught or suggested by the cited references. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 4-9.

Claims 15, 16, 18-21, and 24

As described above, Applicants submit that Claim 14 is not anticipated by the '707 patent. Claims 15, 16, 18-21, and 24 each depend from Claim 14. Thus, Claims 15, 16, 18-21, and 24 include all the features of Claim 14 and recite unique combinations of additional features not taught or suggested by the cited references. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 15, 16, 18-21, and 24.

Claims 27-30

As described above, Applicants submit that Claim 25 is not anticipated by the '707 patent. Claims 27-30 each depend from Claim 25. Thus, Claims 27-30 include all the features of Claim 25 and recite unique combinations of additional features not

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taught or suggested by the cited references. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 27-30.

Claims 33-36

As described above, Applicants submit that Claim 31 is not anticipated by the '707 patent. Claims 33-36 each depend from Claim 31. Thus, Claims 33-36 include all the features of Claim 31 and recite unique combinations of additional features not taught or suggested by the cited references. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 33-36.

Rejection Of Claims 10-13, 22, 23, 32, 34, 37, and 38 Under 35 U.S.C. § 103

The Office Action rejected Claims 10-13, 22, 23, 32, 34, 37, and 38 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,388,707, issued to Suda (the '707 patent). The Applicants respectfully traverse this rejection because the '707 patent, either alone or in combination with other references of record, fails to teach or suggest all of the elements of the claims. See M.P.E.P. § 2143 (stating that in order to establish a *prima facie* case of obviousness for a claim, the prior art references must teach or suggest all the claim limitations).

Claims 10-13

As described above, Applicants submit that Claim 1 is not anticipated by the '707 patent. Claims 10-13, which depend from Claim 1, are believed to be patentable for the same reasons articulated above with respect to Claim 1, and because of the additional features recited therein. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 10-13.

Claims 22 and 23

As described above, Applicants submit that Claim 14 is not anticipated by the '707 patent. Claims 22 and 23, which depend from Claim 14, are believed to be patentable for the same reasons articulated above with respect to Claim 14, and because of the additional features recited therein. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 22 and 23.

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Claims 32, 34, 37, and 38

As described above, Applicants submit that Claim 31 is not anticipated by the '707 patent. Claims 32, 34, 37, and 38, which depend from Claim 31, are believed to be patentable for the same reasons articulated above with respect to Claim 31, and because of the additional features recited therein. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 32, 34, 37, and 38.

Request For Telephone Interview

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner. The Applicant's attorney can be reached at (949) 721-2946 or at the number listed below.

In addition, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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